

**UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA**

David Hughes	:	
	:	
Plaintiff,	:	
	:	
v.	:	No. 2:20-cv-02293-HB
	:	
United Financial Casualty Company	:	
Defendant.	:	
	:	

PLAINTIFF'S PRETRIAL MEMORANDUM

I. FACTS

This case arises from a December 13, 2019 collision in which the tortfeasor negligently disregarded a stop sign causing this crash. This tortfeasor was uninsured, therefore, Plaintiff is presenting the instant claim for Uninsured Motorist Benefits against his insurance carrier. As this is a first party case, the Defendant insurance carrier owes Mr. Hughes a duty of good faith to timely satisfy this claim. Defendant has an insurance policy of only \$250,000.00.

II. Damages

Mr. Hughes unfortunately suffered severe and permanent injuries including disc abnormality and nerve damage, resulting in the need for extensive medical care, diagnostic testing, injections, and ultimately a neurotomy procedure. Ongoing medical treatment is required for his injuries including but not limited to repeat testing, medical surveillance, additional injections, repeat neurotomy/rhizotomy, discectomy and fusion. The costs for his required ongoing and future care exceed \$1,277,988.00. Past medical expenses to date amount to approximately \$19,436.00. Mr. Hughes has full tort rights as he was operating a non-private passenger motor vehicle as a driver for Lyft at the time of this crash.

a. Treatment summary

Following this crash, Mr. Hughes developed significant headaches and pain in his neck, shoulder, and back. As a result he presented to Philly Spine Center where he was evaluated by Dr. Samuel

Holloway and Dr. Thomas Ketner. On physical exam, Mr. Hughes was found to have reduced range of motion, hypertonicity and spasm, and a multitude of positive orthopedic tests including Jackson's compression, cervical distraction, shoulder depressor, and straight leg raise testing. Following the examination, Dr. Holloway and Dr. Ketner instituted a course of therapy and medical care.

Due to the objective abnormalities as shown on physical examination and ongoing pain, Dr. Ketner referred Mr. Hughes for MRI testing of his cervical and lumbar spine. On January 24, 2020, Mr. Hughes underwent the recommended MRIs which unfortunately demonstrated significant injuries. The cervical MRI revealed disc protrusion at C3-C4, C4-C5, C5-C6 and C6-C7. The lumbar MRI revealed disc protrusion at L1-L2, L2-L3, L3-L4, L4-L5, and L5-S1.

Following completion of the MRI studies, Mr. Hughes continued to routinely treat with Philly Spine Center. Mr. Hughes was referred for further evaluation by additional specialists, and presented to Dr. Shervin Najafi at Premier Pain and Rehab Center. Following taking a history, conducting a physical examination and reviewing medical records, Dr. Najafi noted that Mr. Hughes pain symptoms resulted from the automobile collision at issue, and that continued care was required. Dr. Najafi documented that a lumbar epidural steroid injection was medically necessary, however, Mr. Hughes wanted to try to avoid injections if possible and chose to continue with conservative care at that time.

At the referral of Dr. Holloway, Mr. Hughes was seen by Dr. Paul Kosmorsky on July 20, 2020. On examination there was a positive Spurling's sign, cervical compression test, Kemp's test, and straight leg raise test. Moreover, sensory examination revealed decreased sensation in several dermatomes. Dr. Kosmorsky recommended and performed an EMG of the upper and lower extremities. The EMG of the upper extremity demonstrated a left C6 radiculopathy due to this crash.

Mr. Hughes continued to seek care with medical specialists in an effort to relieve the pain he suffered as a result of this collision. On September 23, 2020 he presented to Premier Pain & Rehabilitation, PC where he was examined and treated by Dr. Clifton Burt, M.D. After performing a

physical examination, taking a history, and reviewing diagnostic testing, Dr. Burt determined that Mr. Hughes ongoing pain symptoms resulted from the automobile crash at issue and that it was medically necessary for Mr. Hughes to undergo medial branch block injections which would be followed by radiofrequency ablation. Informed consent was obtained wherein Dr. Burt ensured that Mr. Hughes was aware of the risks of these procedures which include infection, bleeding, allergic reaction, increased pain, additional nerve damage, numbness, weakness, paralysis, and death. Despite the risks, however, Mr. Hughes determined that he would undergo the medial branch block injections. Medial branch block injections were then administered at three separate levels of his lumbar spine - L4, L5 and S1 bilaterally. Fortunately, this procedure proved successful, demonstrating a significant reduction in pain. As a result, Dr. Burt determined that neurotomy/ablation procedure was in fact indicated.

On the advice of Dr. Burt, Mr. Hughes determined to proceed with a multi-level neurotomy procedure. He was draped sterilely, and under fluoroscopy the target areas were identified. Anesthetic was given with a 25-gauge needle. Curved, 10 cm radiofrequency needles with 10 mm active tips were introduced to the anatomic location of the medial brach nerves at L4 L5 and S1 bilaterally which were then destroyed using a radiofrequency generator at 60 degrees Celsius (140 degrees Fahrenheit) for 90 seconds. The needles were then pulled back slightly and a second ablation was done at 60 degrees Celsius for an additional 90 seconds and additional Depomedrol and bupivacaine were injected. Despite the fact the treatment above was helpful, an ablation itself is temporarily palliative in nature and not curative for the injuries suffered, and thus ongoing treatment and evaluation is required.

b. Medical Experts

At trial, Plaintiff will rely upon Dr. Lance Yarus, Tamar Fleischer, RN and Nadene Taniguchi, RN, as his medical experts. Dr. Yarus completed a telemedicine consultation with Mr. Hughes along with a full review of his medical records. He opined that Mr. Hughes injuries suffered in this crash were permanent in nature and require ongoing treatment into the future. This includes the need for repeat

testing, medical surveillance, visits with specialists, repeat courses of therapy, ablation/rhizotomy procedures, and ultimately discectomy and fusion. Dr. Yarus further opines that various medications will be required in order to treat Mr. Hughes' injuries. See Exhibit "A." Perhaps most notably, in his report of April 27, 2020, Dr. Yarus recommended the rhizotomy procedure which Mr. Hughes underwent on September 23, 2020 at the direction of Dr. Burt.

Certified Life Care Planners, Tamar Fleischer and Nadene Taniguchi, RN prepared a life care plan and cost projection pertaining to the care that will be required over Mr. Hughes' life as a result of his injuries. See Exhibit "B." It was documented that Mr. Hughes has an additional life expectancy of 35.1 additional years. Based on the treatment required, the costs of medical care for Mr. Hughes' injuries during the remainder of his life amount to \$1,277,988.00. This is in addition to past medical bills of over \$19,400.00. Notably, Defendants expert does not dispute the necessity of the past treatment, or the need for further injections.

III. WITNESSES (damages witnesses)

Plaintiff David Hughes - 1357 Magee Ave, Philadelphia PA
 Plaintiff's friends and family members as damages witnesses
 Dr. Lance Yarus 1233 Locust St Philadelphia
 Nadene Taniguchi, RN - 191 Presidential Blvd, Bala Cynwyd PA
 Tamar Fleischer, RN - 191 Presidential Blvd, Bala Cynwyd PA
 Dr. Clifton Burt 10184 Verree Rd, Philadelphia, PA
 Custodian of Records and Billing of Philly Spine Center – 3101 Cottman Ave, Philadelphia PA
 Custodian of Records and Billing Premier Pain and Rehab - 10184 Verree Rd, Philadelphia, PA
 Custodian of Records and Billing from OpenMRI – 301 E City Ave, Bala Cynwyd
 Custodian of Records and Billing of Dr. Paul Kosmorsky – 303 Floral Vale Blvd, Morrisville PA

IV. EXHIBITS

Reports and CV of Dr. Yarus
 Reports and CV of Nadene Taniguchi
 Reports and CV of Tamar Fleischer
 Medical Records and billing from Premier Pain
 MRI images, billing and reports from OpenMRI
 Medical Records and billing from Dr. Kosmorsky
 Medical Records and billing from Philly Spine Center

V. **DAMAGES CLAIMED**

Future economic damages of \$1,277,988.00

Past economic damages of 19,436.00

Pain and suffering damages as to be determined by the jury

Loss of enjoyment of life as to be determined by the jury.

VI. Trial Length Estimate

2-3 days.

SIMON & SIMON, PC

/s/

Andrew Baron, Esquire

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was served upon all counsel and parties by way of e-filing and email.

_____/s/_____
Andrew Baron, Esquire

SIMON & SIMON, PC

BY: ____/s/_____
Andrew Baron, Esquire
Attorney for Plaintiff

EXHIBIT A

EXHIBIT B